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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,202

12/01/2003

Thomas Maierholzner

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THE FIRM OF KARL F ROSS
5676 RIVERDALE AVENUE
PO BOX 900
RIVERDALE (BRONX), NY 10471-0900

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/725,202	Applicant(s) MAIERHOLZNER, THOMAS	
	Examiner Justin M. Larson	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the deformable interfitting formations on the tool and on the wall at an edge of the recess, as recited in claim 22, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites the limitation "the opening" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 18-20, 22-25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruster et al. (US 5,509,633 A).

Regarding claim 18, Ruster et al. disclose a combination in a vehicle, the combination comprising a wall (10) formed with a recess (12), a hand tool (21) adapted to fit with the recess and formed with a throughgoing hole (24,26), and a latch means (38) for releasably securing the hand tool in the recess. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Ruster et al. which is capable of being used in the intended manner, i.e., the hand tool (21) being grasped by a user through either of the holes (24,26) and freed from the recess. There

is no structure in Ruster et al. that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 19, Examiner is of the position that the hand tool (21) of Ruster et al. can be considered an ice scraper to the degree that no specific structure of the claimed ice scraper has been set forth in the claims. Any object in a car can be used to scrape ice of a vehicle's windows if a user decides to use that object to that effect. If a user did not have a conventional ice scraper that was specifically designed by a manufacturer for the purpose of scraping ice, then they would likely rely on some other device in their car if they needed to operate an ice-covered vehicle.

Regarding claim 20, the wall (10) of Ruster et al. is part of a vehicle's center console.

Regarding claim 22, the latch means of Ruster et al. includes elastically deformable interfitting formations (38,40,42) on the tool and on the wall at an edge of the recess, to the degree that such elastically deformable interfitting formations are understood in light of Applicant's originally filed disclosure.

Regarding claims 23 and 25, the throughgoing hole (24,26) of Ruster et al. is at least as large as and is at least partially of larger diameter than a standard beverage can and the tool (21) forms a cup holder.

Regarding claim 24, the hole is generally circular and has elastically deformable lips (30) adapted to grip a standard beverage can fitted in the hole.

Regarding claim 27, the tool (21) of Ruster et al. is elongated and has long sides formed with cutouts that facilitate gripping of the tool.

6. Claims 18-20, 22, 23, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sudo et al. (JP 2002316572 A).

Regarding claim 18, Sudo et al. disclose a combination in a vehicle, the combination comprising a wall (6) formed with a recess (9), a hand tool (9) adapted to fit with the recess and formed with a throughgoing hole (10), and a latch means (15/16) for releasably securing the hand tool in the recess. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Sudo et al. which is capable of being used in the intended manner, i.e., the hand tool (9) being grasped by a user the hole and freed from the recess. There is no structure in Sudo et al. that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 19, Examiner is of the position that the hand tool (9) of Sudo et al. can be considered an ice scraper to the degree that no specific structure of the claimed ice scraper has been set forth in the claims. Any object in a car can be used to scrape ice of a vehicle's windows if a user decides to use that object to that effect. If a user did not have a conventional ice scraper that was specifically designed by a manufacturer for the purpose of scraping ice, then they would likely rely on some other device in their car if they needed to operate an ice-covered vehicle.

Regarding claim 20, the wall (6) of Sudo et al. is part of a vehicle's center console.

Regarding claim 22, the latch means of Sudo et al. includes elastically deformable interfitting formations (15/16) on the tool and on the wall at an edge of the

recess, to the degree that such elastically deformable interfitting formations are understood in light of Applicant's originally filed disclosure.

Regarding claims 23 and 25, the throughgoing hole (10) of Ruster et al. is at least as large as and is at least partially of larger diameter than a standard beverage can and the tool forms a cup holder.

Regarding claim 26, Sudo et al. disclose the tool being made from a plate-like material. Examiner is of the position that a plate-like material can be considered hard to the degree that one acceptable definition of the word "plate" reads, "a thin, flat sheet or piece of metal or other material, esp. of uniform thickness" "plate." *Dictionary.com*

Unabridged (v 1.1). Random House, Inc. 20 Feb. 2007, from Dictionary.com website:

<http://dictionary.reference.com/browse/plate>>. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Sudo et al. which is capable of being used in the intended manner, i.e., an edge of the tool being used as a scraper. There is no structure in Sudo et al. that would prohibit such functional intended use (see MPEP 2111).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruster et al. or Sudo et al. as applied above, either in view of Wright (US 5,381,940 A).

The combinations of both Ruster et al. and Sudo et al. include the claimed features except for latch means including magnets. Instead, the latch means of Ruster et al. includes a tab (38) and the latch means of Sudo et al. also includes a tab (16). Wright, however, teaches that when securing a removable receptacle (166) in a carrying recess (102), any of ribbed edges, tabs, or magnets can be used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to secure the removable tool of either Ruster et al. or Sudo et al. within their respective recess using magnets instead of tabs, as taught by Wright, since tabs and magnets are known art-equivalent means of securing a removable receptacle within a recess.

9. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruster et al. or Sudo et al. as applied above, either in view of Page, Jr. (US 4,300,709 A).

The drink holder tools of Ruster et al. and Sudo et al. include the claimed features except for a seat shaped to releasably retain a coin. Page, Jr., however, also discloses a drink holder tool and teaches that a recess (40) can be formed on the tool for releasably retaining one or more coins (col. 3 lines 10-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a coin recess in the tool of either Ruster et al. or Sudo et al., as taught by Page, Jr., so that a user would have convenient and easy access to one or more coins if they need them, such as when driving through a toll.

Art Unit: 3782

10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Ruster et al. or Sudo et al. as applied above.

Ruster et al. and Sudo et al. both disclose the claimed tool except for the tool being formed of a pair of similarly shaped secured-together elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tool of either Ruster et al. or Sudo et al. from separate pieces, perhaps molded pieces, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

11. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruster as applied in paragraph 10 above in view of Suzuki et al (JP 07271316 A).

The modified Ruster et al. tool includes the claimed features except for a light source and a battery between the elements making up the tool. Suzuki et al., however, teaches that a light source (32) can be implemented within a tool (41) like that of Ruster et al., the light source being powered by an internal battery (capacitor). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a light source and battery in the tool of Ruster et al., as taught by Suzuki et al., in order to light up an object held within the tool for aesthetic purposes and to help a user locate the object in a dark environment.

Allowable Subject Matter

12. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments filed 11/27/06 have been fully considered but they are not persuasive. Applicant has asserted that Ruster teaches an after-market car accessory that can hold thing or be a cup holder, but does not teach the accessory being removed and used as a tool. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Ruster et al. which is capable of being used in the intended manner, i.e., the hand tool being removed and used as a tool. There is no structure in Ruster et al. that would prohibit such functional intended use (see MPEP 2111). Any object in a car can be used to scrape ice of a vehicle's windows if a user decides to use that object to that effect. If a user did not have a conventional ice scraper that was specifically designed by a manufacturer for the purpose of scraping ice, then they would likely rely on some other device in their car if they needed to operate an ice-covered vehicle.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 3782

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
2/20/07


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER